

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on March 15, 2005 at 8:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. Joey Jayne (D)
Rep. Christine Kaufmann (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)
Rep. Rick Ripley (R)
Rep. John Sinrud (R)

Members Excused: Rep. Carol C. Juneau, Vice Chairman (D)
Rep. John E. Witt, Vice Chairman (R)
Rep. Bill E. Glaser (R)
Rep. Verdell Jackson (R)
Rep. Ralph L. Lenhart (D)
Rep. Jon C. Sesso (D)
Rep. Jack Wells (R)

Members Absent: Rep. Penny Morgan (R)
Rep. Janna Taylor (R)

Staff Present: Jon Moe, Legislative Branch
Marcy McLean, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 102, 3/10/2005; HB 219,
3/10/2005; HB 338, 3/10/2005; HB
374, 3/10/2005; HB 414, 3/10/2005;
HB 535, 3/10/2005; HB 589,
3/10/2005; HB 673, 3/10/2005; HB
745, 3/10/2005; HB 364, 3/10/2005;
HB 768, 3/10/2005

Executive Action: HB 338, HB 239, HB 745, HB 22,
HB 340, HB 364, HB 368, HB 640,
HB 470, HB 169, HB 392, HB 673,
HB 369, HB 99, HB 536, HB 728,
HB 577, HB 435

HEARING ON HB 745**Opening Statement by Sponsor:**

REP. GARY MATTHEWS, HD 40, Miles City, opened the hearing on **HB 745**, a bill for the Governor's supplemental appropriations. He said that the supplementals will improve the legislature's ability to meet the statutory expenditure limits set by law. It also addresses some important issues that they need to deal with. The largest expenditure, \$16 million, is to pay off the IRIS computer system. Nine million dollars will be used for an early pay off of the Crow Tribe settlement, which was negotiated by the 1999 legislature. The third largest appropriation is for the \$8.5 million negotiated agreement with the Montana Highway Patrol (MHP). Other appropriations are: 1) Department of Health and Human Services (DPHHS) \$5 million, 2) Department of Corrections (DOC) \$4.4 million, and 3) district court reimbursement of \$6.8 million.

Proponents' Testimony:

Amy Sassano, Governor's Budget Office, said that HB 745 has components from both Governor Martz and Governor Schweitzer, including unavoidable biennium overruns and programs that both governors support.

Larry Fasbender, Department of Justice (DOJ), said the MHP settlement is for a wage claim that was filed several years ago, relating to overtime and subsistence. He said that it is a contingent liability that they have carried on their books for a long time. Prior to the settlement, they had estimated the claim to be between \$9 million and \$20 million. The \$8.5 million settlement was reached last fall and releases the State from any

other liabilities. The court has approved the settlement and it is an obligation of the State to pay it. In addition, the bill appropriates \$400,000 for the Major Litigation Fund; this money is usually used to pay for expert witnesses and support staff. An example of this is the \$150,000 used last year to pay for expenses associated with enforcing the Tobacco Settlement Master Agreement. He said that he understood that the supplemental appropriations are difficult for the legislature to deal with, but reminded the Committee that they are for obligations that the State has incurred.

John Chappuis, DPHHS, said that an audit of Department of Child and Family Services identified two problems that have caused them to have a significant reduction in Federal funds. Also, the Child Support Enforcement Division's Federal Incentive Grant has been reduced. He said that both of these problems have been addressed for the next biennium.

Ann Bauchman, Department of Natural Resources and Conservation (DNRC), said that HB 745 includes \$2 million for fire suppression for FY04 and FY05. Fire expenditures in FY04 were over \$80 million; DNRC received Federal funds of \$32 million and Federal Emergency Management Agency (FEMA) of \$30 million, plus reimbursement from other Federal entities. The supplemental request is for \$1.2 million to cover the remainder of those expenses. In FY05 only about \$4 million was spent on fire suppression. DNRC received \$2.2 million in Federal funds and about \$1 million from other Federal entities. They are estimating their Spring 2005 fire costs to be higher than normal, \$1 million. The supplement request for FY05 is \$961,000 to cover the remainder of these expenses.

[EXHIBIT \(aph57a01\)](#)

[EXHIBIT \(aph57a02\)](#)

She said that the second item in HB 745 is \$9 million for the Crow Tribe settlement. The 1999 Special Session resolved the water rights compact and coal severance tax settlement at an amount of \$15 million paid over 15 years. DNRC paid \$3 million in 2001, \$1 million in 2003 and \$2 million in 2005, with \$9 million remaining unpaid. Both Governor Martz and Governor Schweitzer think that one-time money would be a good idea to pay off this settlement.

Faye Bergan, Reserve Water Rights Compact Commission, said that in 1998 the Crow Tribe approached the State seeking to resolve several issues that would help them to consolidate the water and land on the Crow Reservation. Two other issues involved the coal severance tax and Section 2, a land status issue concerning Crow lands from the 1920 Act. She said that the combined water rights

and coal severance tax issues were settled in the 1999 Special Session. She said that Governors Martz and Schweitzer both feel that it is good public policy to pay off the remaining \$9 million balance. The money would go into an escrow account, and the Tribe would not get the money until all approvals are received from Congress, the Water Court and the Crow Tribe. At that time, the water rights would be settled and the coal severance tax case would be dismissed. She said that the Crow Tribe is in support of this legislation.

Joe Williams, DOC, said that he is a reluctant proponent of HB 745. He said that their supplement request is based upon increased prison population, due to methamphetamine, and the expense of vacancy savings. They are unable to absorb vacancy savings because they are forced to pay overtime to cover the cost of the unfilled position. He said that they are still working on their budget, and anticipate there may be another increase.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 22}

Susan Cottingham, Reserve Water Rights Compact Commission, provided a written letter of support from the Crow Tribe.
[EXHIBIT \(aph57a03\)](#)

Jim Oppedahl, Administrator, Montana Supreme Court, said that their portion of the supplemental was for the district court program. Most of it is for the new responsibilities established in 2001 and 2003, particularly public defender and district court costs. There is contingency language in the bill because these costs are very difficult to estimate.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. SINRUD asked where the Medicaid funding was in terms of the \$2.16 million supplement request for the Department of Child and Family Services. **John Chappius** said that this department's total request is for \$4 million, but they have used \$2 million in Medicaid funds to bring the supplemental request down to \$2.16 million. Since that time, the caseload has increased and they have had to use more of the Medicaid funds. He said that technically, they will owe \$2.16 million in bills by the end of this fiscal year.

REP. SINRUD said that he thought the enforcement of the Tobacco Settlement Master Agreement was paid for from the settlement funds. **Larry Fasbender** said they have attempted several times to get legislation that would allow them to do that, but currently

all the money from the tobacco settlement goes into the General Fund.

REP. SINRUD, in referring to Lines 25-28 of the bill, asked about the exempt staff pay out and the Highway Patrol retirement, and asked if these are unfunded liabilities, such as overtime, sick time, etc. **Larry Fasbender** said that at the end of every four years, the DOJ exempt staff may choose that time to leave. It has been the practice of the legislature to cover those exempt staff costs when they terminate.

REP. SINRUD said that the DOJ has 4% vacancy savings, and asked how they would handle an exempt staff payout on an off (non-election) year. **Larry Fasbender** said that classified employee payouts are always covered either by vacancy savings or finding other sources of funds. Exempt staff payouts on an off-year are usually paid for from other funds within the department.

REP. SINRUD said that on Page 2 Line 2, it states that the mental health "ombudsman" is no longer eligible for Federal funding, leaving the State responsible for paying for this program. **Amy Sassano** said that in 2003 the position was funded with Federal funds, but now it has been deemed ineligible for those funds. Approximately \$50,000 from the Job Tax Growth Relief Fund has helped to fund this position, the supplement is to cover the expenses for FY05. **REP. SINRUD** asked what would have happened if this lack of federal funding had occurred in 2004. **Amy Sassano** said that there are no funds in the Governor's budget to fund this program. The program exists in statute, so it could not be discontinued without getting approval from the legislature.

{Tape: 1; Side: A; Approx. Time Counter: 22 - 32.6; Comments: End of Side A}

REP. SINRUD asked what would happen if DNRC did not receive the \$5.9 million they are negotiating with FEMA. **Ann Bauchman** said that payment of this money is dependent upon eligibility of the bills submitted to FEMA; if a bill is determined by FEMA to be ineligible, then it would become a State cost. She said that they are fairly certain that the \$5.9 million will be paid by FEMA. **REP. SINRUD** said he assumed this is an outstanding bill, since it is for the 2004 fire suppression costs, and if so, he wondered what would happen if FEMA does not pay DNRC until August 2005. **Ann Bauchman** answered they have not paid their total costs to the U.S. Forest Service, pending reimbursement from FEMA. She said the Forest Service has been very understanding about delaying their payment until they receive funds from FEMA. If FEMA funds are not received until August, then DNRC would have to borrow money. She said they would only do that if they were certain that the FEMA funds would be forthcoming. If FEMA

decides not to pay, then the money owed to the U.S. Forest Service becomes a State obligation and DNRC would be asking the legislature for more money. She said that they have asked FEMA to make their determination while the legislature is still in session, so the issue can be resolved soon.

REP. SINRUD asked why money to pay for the IRIS computer system is being placed in HB 745, rather than continuing to pay it off as described in the Martz budget. **REP. MATTHEWS** said that last session there was a lot of controversy over how they would pay for this new computer system. The Audit Division has subsequently decided that it was unconstitutional for the State to create debt to pay for the system. He said that they believe that it is good public policy to pay off this debt.

REP. RIPLEY asked for clarification for Section 2 Lines 17-24. **Amy Sassano** said funding to school base aid is uncertain, but if they get enough money into the Guarantee Fund, they will not need this requested supplemental. She said that the supplemental provides them with the flexibility to pay whatever bills are due to schools. **REP. RIPLEY** asked why they think there might be a shortfall in this account. He also asked what amount they normally ask for in this supplemental request. **Amy Sassano** said that this fund was short \$1 million in FY04, so they had to move General Fund authority from FY05 into FY04. Therefore, FY05 was short \$1 million right from the beginning. She said that the Guarantee Fund over the past three years has requested a supplemental. She said that last biennium was the first time that they needed this type of language, where they requested \$3 million but ended up using only \$1 million.

REP. JAYNE asked, of the \$13.9 million supplemental for the DOR, how much was for the IRIS payoff. **Lisa Smith, DOR**, said that at the end of FY05 it will take \$13.9 million to pay off the IRIS loan balance, which has a final payment date of 2010. The \$2.1 million supplemental requested by the Department of Administration is for paying off the contractor payments.

REP. MCNUTT asked if the MHP case would be settled by July 1, 2005. **REP. MATTHEWS** said that on February 25, 2005, district court approved the MHP settlement for \$8.5 million.

REP. RIPLEY said that if there is no signed settlement agreement with the Crow Tribe, then what is the benefit of paying off the settlement balance now. **REP. MATTHEWS** said that Governors Marts and Schweitzer have both placed this pay off in their budgets. In the past, there was not enough money in the budget to pay this settlement, but now that there is a surplus, he said that it was good public policy to pay this.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 19.1}

Closing by Sponsor:

REP. MATTHEWS said that this is an important bill; it helps the legislature as they try to deal with the budget cap. He asked the Committee to pass the bill on to the House floor.

HEARING ON HB 338

Opening Statement by Sponsor:

REP. LARRY JENT, HD 64, Bozeman, opened the hearing on **HB 338**, a bill to offer "professional retirement option" for Teachers Retirement System (TRS) members who continue to teach after reaching normal retirement eligibility. It would increase the multiplier for these teachers who wait to retire from 1.67% to 2%. He said that teacher retention, as pointed out in the recent school funding lawsuit, was one of the things affecting whether or not Montana children were receiving a quality education. Many Montana teachers leave after 25 years of service because the retirement is so low, and we are losing these teachers to other states.

The Governor's budget proposes total K-12 funding of \$1.2 billion, with 7.2% increase in biennial funding, which comes to \$81.2 million. Some of that money will be allocated to teacher salaries and retirement, and he said he would like to have some of that money allocated to HB 338. This could specifically come from either the \$6.9 million facility bond reimbursement money and/or from the \$27.1 million increase in entitlements. In the TRS, employees contribute 7.15%, employers (including the State) contribute 7.47% and the State's current General Fund contribution will increase from .11% to .99% if this bill passes.

EXHIBIT(aph57a04)

Proponents' Testimony:

Tom Bilodeau, Montana Education Association-Montana Federation of Teachers (MEA-MFT), said that this idea originally started in Governor Racicot's Commission on Teaching in 1999, since Montana was experiencing high rates of teacher retirements and it was difficult to find quality replacements. He said that the 2% formula is an incentive to encourage teachers to remain teaching in Montana.

EXHIBIT(aph57a05)

**{Tape: 1; Side: B; Approx. Time Counter: 19.1 - 32.6; Comments:
End of Tape 1}**

Darrell Rud, School Administrators of Montana, said that they have been promoting this idea for the past three years. A study they conducted found that the main reason teachers leave the state is the retirement system.

David Senn, TRS, said that HB 338 is an alternative the legislature can use to address the school funding issue.

Opponents' Testimony:

David Ewer, Governor's Budget Director, said that information from the Legislative Audit Division shows that the State's current level of benefits, combined with the contributions and actuarial assumptions, is not sufficient to adequately support the current level of benefits. This is true in both the TRS and the Public Employees Retirement System (PERS). To remain financially solid, the legislature needs to pass legislation to increase employer contributions. Therefore, the Governor's office is not prepared to support any bill that increases benefits to the participants.

The idea that this bill could be paid for by the facility bond is not feasible since that is one-time money. The cost of this bill would quadruple in the next biennium. He said that they are sympathetic with these teacher retention issues, but this bill is too expensive.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.5}

Questions from Committee Members and Responses:

REP. SINRUD asked about the long-range impacts of this bill.

David Senn said that this bill provides for the funding over two bienniums; .99%, or \$6.5 million, in FY06 and an additional .99%, or \$13 million in FY07. Each subsequent year would be \$13 million, plus any inflation and salary increases.

REP. SINRUD said that the actuary review of TRS states that the fund is actuarially unsound, yet HB 338 is requesting to give more benefits. **David Senn** said that the review concluded that TRS needed to increase contributions in order to pay off the unfunded liability over 71 years. He said that HB 338 is brought forth to address the school funding lawsuit, and provides for the funding of the increased benefits. **Tom Bilodeau** agreed that the benefit is fully funded over 30 years with new money. The requesting funding in HB 181 to make TRS actuarially sound is a necessary funding component, and is constitutionally, politically

and morally the right thing to do. They recognize that it is expensive, but it is money well spent by the State of Montana on behalf of its schools.

REP. RIPLEY asked if the projections are still counting on an 8% investment return. **Tom Bilodeau** said that has been adjusted down to 7.75%.

REP. SINRUD asked what the State would need to add to the TRS annually in order to meet the constitutional requirement to make the fund actuarially sound. **David Senn** said that HB 181 has a cost of \$7 million per year, with 27% of that coming from General Fund and the remainder coming from the school districts' employer contribution. He clarified that HB 338 has additional money in it to fund this new benefit, it does not add to HB 181. If both bills passed, there would not be any increased costs since they both have funding in them.

REP. SINRUD said that in subsequent bienniums the State could be spending \$33 million per biennium to actuarially fund HB 338 and the existing TRS obligation. He asked what the State currently contributes to TRS. **David Senn** said that \$33 million is correct. He roughly estimated that the State's current contribution is about \$10 million.

{Tape: 2; Side: A; Approx. Time Counter: 6.5 - 18.3}

Closing by Sponsor:

REP. JENT said that HB 338 is one of the top three bills that deals with teacher recruitment and retention. He said that it does not add any liability to the TRS, because HB 181 separately deals with that issue of unfunded liability.

HEARING ON HB 414

Opening Statement by Sponsor:

REP. DEE BROWN, HD 3, Hungry Horse, opened the hearing on **HB 414**, a bill to statutorily appropriate unexpended juvenile delinquency funds to a youth intervention and prevention account. Historically, district court expenses were administered at the county level and any surplus monies were distributed by the Department of Corrections (DOC). Now that district court has become the responsibility of the State, this bill would require that the unexpended funds from youth court be reverted back to the Department of Justice (DOJ).

Proponents' Testimony:

Jim Oppedahl, Montana Supreme Court, said that this is an accounting clean-up that is a result of district court assumption. It comes about because of a Legislative Audit Division recommendation, and has no fiscal impact.

Karen Duncan, Youth Services, DOC, said that this bill moves the unexpended money from each district court to the Supreme Court so that each district can spend it according to their plan.

John Northy, Legislative Audit Division, said that this bill not change the dollar amounts, it just changes how the distribution is handled at the State level.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. BROWN asked the Committee for their support.

HEARING ON HB 219**Opening Statement by Sponsor:**

REP. EMELIE EATON, HD 58, Laurel, opened the hearing on **HB 219**, a bill to allow for a \$1,900 tax exemption on Montana tax returns for households that live at or below the Federal poverty level. *{Tape: 2; Side: A; Approx. Time Counter: 18.3 - 25.7; Comments: Reps. Juneau, Lenhart, and Witt entered hearing.}*

The Federal poverty level for a family of four is \$18,810 and the current standard Montana exemption is \$1,900. Also, additional exemptions are allowed for the elderly, blind and all dependents. HB 219 would allow a family that meets the poverty criteria a \$1,900 exemption for the head of household, plus an additional exemption for the spouse and up to two additional exemptions for the household. The objective is to give enough exemptions so that their tax burden is not increased; it is not a tax refund.

She said she thought it was unfair for the State to fund their programs off of the hard work of the poorest residents of our state. Currently, 14.6% of the state's population live below the poverty level, and the \$100 tax savings provided in this bill could go a long way in buying food for their family.

EXHIBIT (aph57a06)

Proponents' Testimony:

Eric Schiedemeyer, Montana Catholic Conference, said that the poor and vulnerable citizens of our state should be our first priority. Any efforts to provide for their basic financial needs must enhance their lives and dignity. HB 219 is simple to understand and administer, yet will be incredibly effective and efficient in accomplishing its goal.

Kim Abbott, Working for Economic Equality and Liberation (WEEL), said that the \$100 tax break helps these families who are living in poverty to meet their basic needs.

Claudia Clifford, American Association of Retired Persons (AARP), said that they believe in the ability to pay taxes and a progressive tax system, which is reflected in HB 219. She said that there are 12,000 Montanans over the age of 65 who live at or below 100% of the poverty level.

{Tape: 2; Side: A; Approx. Time Counter: 25.7 - 32.6; Comments: End of Side A, Tape 2}

Opponents' Testimony: None

Informational Testimony:

Jim McKeon, Department of Revenue, said that he was available to answer questions.

Questions from Committee Members and Responses:

REP. KAUFMANN asked how many of poverty households provided the \$988,000 in taxes paid by this group. **Jim McKeon** said that information is not in the Fiscal Note, but they estimate that 86,241 households would be affected by this bill.

REP. KAUFMANN said that this information shows that the State is collecting close to \$1 million in taxes from people living in poverty. She said that she is having a bill drafted to attach a 1% surcharge on people learning over \$1 million, and thought that bill could pay for the tax exemption proposed in HB 219.

Closing by Sponsor:

REP. EATON said that in order to receive any benefit from this bill, a family would have had to live at or below the Federal poverty year for an entire year. The State should not rely on taxes from its poorest residents to finance State programs.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 6.8}

HEARING ON HB 673**Opening Statement by Sponsor:**

REP. EDWARD BUTCHER, HD 29, Winifred, opened the hearing on **HB 673**, a bill to provide an optional method of complying with driver education requirements. The bill is geared towards students who are outside the public school system, such as home schooled students. Five other states have a similar detailed program. He said that a study has shown that parental involvement is the most important factor when teaching teens to drive. This strict and rigid program requires a six-month driving period, with 60 hours and 3,000 miles during this training program. He said that it exceeds current driver's education requirements.

Proponents' Testimony:

Becky Stockton, Helena, said that this is a much-needed program for home schooled children. She said that some of the school districts in smaller communities will not allow home schoolers to enroll in their programs. Therefore, parents have to drive their children to the larger school districts so they can participate in driver's ed; she said that is a time and financial burden on the parents. She said that when her own children took driver's ed, it conflicted with their summer plans, jobs and athletics. The cost of driver's ed would drop for families participating in this program. Prices for public school drivers ed are: Townsend \$40, Helena \$110, Missoula \$350. She said that children trained to drive by their parents will be better drivers because they will be better trained.

EXHIBIT (aph57a07)

{Tape: 2; Side: B; Approx. Time Counter: 6.8 - 18.7}

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. JAYNE asked why home schoolers can't participate in public school drivers ed programs, and why public school students can't participate in HB 673. **REP. BUTCHER** said that the Office of Public Instruction (OPI) say that it is available, but some local school officials are saying, "No." He said that public school students already have access to drivers education and if they opened HB 673 to all students, the Drivers Ed Association would oppose it. **REP. JAYNE** said that if one group of students is being treated differently, it could become a constitutional

issue. **REP. BUTCHER** said that wouldn't happen because this is the same as offering social programs to the disadvantaged.

REP. MCNUTT asked the sponsor how many home schooled or private school students have been denied drivers education. **REP. BUTCHER** said that he doesn't know specifically, but had received a phone call telling of one situation.

REP. MCNUTT asked of the stringent requirements for the parents, are they going to take the time to be re-certified to do this.

REP. BUTCHER said these parents who are home schooling their children have already made that type of commitment. He said that these home school parents are very firm, committed and dedicated.

CHAIRMAN BUZZAS said the Fiscal Note shows a negative impact of \$7,290 in FY06, assuming that of 13,000 individuals at age 14 1/2, 260 of them are in private or home schools. She asked if that meant that all 260 of these students will participating in this program. **REP. BUTCHER** said that there is not an accurate count of how many students are home schooled. He said he thinks the Fiscal Note is inaccurate, because he does not think it will cost the State any money. He said that home schoolers are a highly-motivated group and most all of them will participate.

CHAIRMAN BUZZAS said that the bill excludes a lot of students. Many students in public schools are also on waiting lists to receive drivers education, and why should preference be given to a special group. **REP. BUTCHER** said the purpose of the bill is for all children who begin driving at age 16 have some drivers education. He said the bill is not discriminatory, because public school students have their own program. Even though OPI mandates that all students are eligible for drivers education, some of the schools resent the home schoolers and will not allow them to participate.

{Tape: 2; Side: B; Approx. Time Counter: 18.7 - 32.6; Comments: End of Tape 2}

Closing by Sponsor:

REP. BUTCHER asked the Committee to keep this bill alive.

HEARING ON HB 768

Opening Statement by Sponsor:

REP. ROBIN HAMILTO, HD 92, Missoula, opened the hearing on **HB 768**, a bill to grant \$150,000 to the Seeley Lake water and sewer

district for an engineering design. He said that Seeley Lake is the largest un-sewered town in Montana. Many of the old septic systems are not working properly and they desperately need a city sewer system to preserve the quality of the lake water. He said that Seeley Lake has raised \$55,000 in local contributions, secured a \$500,000 Federal grant for construction, \$100,000 from the Department of Natural Resources and Conservation (DNRC), and \$750,000 from another Federal grant. However, for some of this money to work, they must have a bond debt election. In order to inform the voters about this complex plan, they need to do an exhaustive engineering study. HB 768 would provide them with the money to pay for this study.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.3; Comments: Rep. Morgan entered hearing.}

Proponents' Testimony:

Sen. Carol Williams, Missoula, said that the people of Seeley Lake will make this sewer system plan happen. They are hard-working, creative, understand the needs, and are concerned about the price tag. She said the \$150,000 will go a long way in getting them on track for getting the sewer system done.

Dave Aune, engineer for Seeley Lake, handed out a map of Seeley Lake showing locations of septic tanks and ground water flows.
EXHIBIT(aph57a08)

He said that they have detected elevated levels of chlorides and nitrates in many of the water wells in Seeley Lake. He said that in order to pass the bond debt election, they need more detailed information for the voters. An engineering study would help them to determine where the system would be located, what the environmental impacts are, how the debt will be structured, what the rates and charges will be, etc.

Opponents' Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN BUZZAS asked when the local bond election would be done. She also asked if Federal money could be used for this engineering study. **Dave Aune** said that they are still looking at all sources of funding, but anticipate the election to be next winter or spring. He said that the Federal Stag grants are earmarked for construction, and you have to be able to prove that the project is approved and ready to go.

Closing by Sponsor:

REP. HAMILTON said that Seeley Lake badly needs a sewer system and they have worked hard to raise other monies. He asked the Committee to approve the \$150,000 grant request so they can secure millions of dollars in grants to build the system.

{Tape: 3; Side: A; Approx. Time Counter: 1.3 - 10.3}

HEARING ON HB 535**Opening Statement by Sponsor:**

REP. LLEW JONES, HD 27, Conrad, opened the hearing on **HB 535**, a bill to revise taxation on stripper well production.

EXHIBIT(aph57a09)

EXHIBIT(aph57a10)

The purpose of the bill is to revitalize the small stripper wells, those producing less than three barrels of oil per day. These are the "mom and pop" companies that continue to work these wells after the large producers have left them because of low production. He said that local counties had been requesting money from the State to cap these wells; Pondera County wanted to cap 100 of their 225 wells. The State severance tax on these wells is implemented when the price per barrel, as stated in the Wall Street Journal, reaches \$38, at which time the tax goes from .5% to 12.5%. However, the quality of this oil is so low that they usually receive about \$10 less per barrel. Therefore, for the past two years they have been subject to this tax, yet they are receiving \$10 less per barrel. HB 535 attempts to correct this inequity by lowering the 12.5% severance tax to 6%.

He said that HB 535 is about economic development, because these stripper wells are what keeps small towns alive. The people working on these wells are probably paying 5-6% in State income tax. In reviewing the spread sheet presented in Exhibit 10, he estimated that the income to the State for each well kept or brought online would be about \$2,818. The amount of State grant money necessary to cap a well is \$2,500. If you assume that 70% of the money associated with the stripper well remains in the local community (\$21,576), the multiplier effect is \$75,000 for each well brought online. He said that the Taxation Committee said that the tax could be taken to zero and it would not cost the State anything since the State income tax and multiplier more than offset any loss of revenue.

{Tape: 3; Side: A; Approx. Time Counter: 10.3 - 24.3}

Proponents' Testimony:

Sen. Jerry Black, Shelby, said that oil production is a major economic development factor in north central Montana. The cost to maintain these wells versus the profit they produce, is tremendous. He said that the State needs to make it economically feasible for them to continue to operate.

Patrick Montalban, Northern Montana Oil and Gas Association, said that he represents 100 of the "mom and pop" operations. The current 12.5% severance tax rate when the price of oil is at \$38 per barrel, has caused these small producers a tremendous amount of expense relative to their profit.

EXHIBIT(aph57a11)

{Tape: 3; Side: A; Approx. Time Counter: 24.3 - 32.6; Comments: End of Side A, Tape 3}

Barb Judisch, Balko, Inc., requested support for HB 535 because it would "better allow them to maintain their business."

EXHIBIT(aph57a12)

Willie Duffield, Montana Association of Oil, Gas and Coal Producing Counties, said the county commissioners support this bill. However, future consideration should be given to eliminating this tax when oil prices reach a certain level.

Doug Kaerchar, Hill County Commissioner, Montana Association of Counties, asked for support of the bill.

Lois Miller, Hawley Desimon, Inc., said that they have been in the oil business for 80 years, and these old wells have lots of maintenance expense. Currently, their wells produce one to three barrels per day. When the price per barrel goes over \$38, increasing the severance tax to 12.5%, it cuts into any of their profit.

EXHIBIT(aph57a13)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 16.1}

Gail Abercrombie, Montana Petroleum Association, said that HB 535 is about economic development for these small communities.

Curt Dahlgard, Somont Oil Company Shelby, said that his family-owned company has 300 oil wells, each producing on average .67 barrel per day. He said that the tax incentive has been a success story, because since its inception they have added four employees and hired a petroleum engineer.

Catherine Finlayson, Hawley Desimon, Inc., said that their family owned business depends upon the small profit they make when the price of oil goes up.

EXHIBIT(aph57a14)

Rick Rice, Phoenix Energy, said that many of the "mom and pop" operations have other jobs to support their oil field habits. He said the 12.5% severance tax is a terrific burden for them.

Gary Feland, Kipling Energy, Northern Montana Oil and Gas Association, said that members of their association are paying lots of taxes to the State, to the tribe and a 12% royalty. He said the reduction in this tax to 6% would go a long ways in helping them.

Opponents' Testimony: None

Informational Testimony:

Van Charlton, Department of Revenue, said that he was available to answer questions.

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LLEW JONES said that this is about economic development for small communities. The economic development can lead to additional revenue to the State.

{Tape: 3; Side: B; Approx. Time Counter: 16.1 - 24.6; Comments: Rep. Wells entered hearing.}

HEARING ON HB 589

Opening Statement by Sponsor:

REP. WAYNE STAHL, HD 35, Saco, opened the hearing on **HB 589**, a bill to revise workforce training laws. It would codify into law the changes that have occurred over the years in workforce funding from the Federal to the State government. He said that for 18 months they tried to work with the Department of Labor (DOL) on these issues, but since they had disagreements, they have opted to introduce this legislation. The Workforce Investment Act funds, along with national emergency grants, are the funding they were trying to agree on. The intent of the bill is to streamline services through "better integration of employment and training programs coordinated and consolidated through local one-stop delivery systems under the guidance of

local boards." He said that Federal law requires Montana to have a one-stop system. Currently, the State workforce and the Federal workforce boards do not get along, so there are two systems. The purpose of the bill is to bring these two agencies together to work towards the one-stop system. This has caused the Federal government to sometimes withhold money. On Page 6 Line 10 of the bill they have added language to clarify use of money from the national emergency grants.

{Tape: 3; Side: B; Approx. Time Counter: 24.6 - 32.6; Comments: End of Tape 3}

Proponents' Testimony:

Doug Kaercher, Hill County Commissioner, Montana Association of Counties, said that yesterday they reached an agreement with the DOL and asked the Committee to delay executive action for a few days. The agreement sets boundary limits for the two local service areas and the governance language gives the local boards flexibility. They also were able to clear the air regarding all entities providing services to people in need. Once they finalize this agreement, they will be back to the Committee to tell them that HB 589 is no longer necessary.

Keith Kelly, Commissioner of DOL, said that the DOL has previously been an opponent of this bill, because they view the issues from a different perspective. He said they have never intended to malign REP. STAHL. He said that yesterday's meeting was helpful in clearing the air, and hope that the final agreement will make HB 589 unnecessary. The DOL believes that the best service is provided closest to the people, and they are a part of that delivery. It is best for the local communities to decide what is best for their area.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. SESSO said that if the Committee is being asked to delay executive action on this bill, his concern was that once a hearing is closed they can no longer take public input. **REP. JUNEAU** said that during executive action the Chairman can allow for questions to the public.

REP. KAUFMANN asked if the negotiated agreement would affect the Fiscal Note. **Keith Kelly** said that an agreement assumes that HB 589 will go away.

Closing by Sponsor:

REP. STAHL said that he thinks the Fiscal Note includes every Federal program, and is being used as a scare tactic.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 14.6}

HEARING ON HB 364**Opening Statement by Sponsor:**

REP. RICK MAEDJE, HD 2, Fortine, opened the hearing on **HB 364**, a bill to facilitate mail order purchase of certain prescription drugs from Canada. He passed two amendments that he said would take care of the funding and clean up the bill so that the Governor would sign it.

[EXHIBIT\(aph57a15\)](#)

[EXHIBIT\(aph57a16\)](#)

The first amendment would have the DOL, not the DPHHS, oversee the Board of Pharmacy. The Governor requested the amendment to state that the Board of Regents would direct the Montana School of Pharmacy to help out in reviewing the safety and integrity of foreign manufacturers, wholesale drug distributors and retailers. The second amendment would replace the General Fund expenditure with money from the tobacco tax.

Opponents' Testimony:

Jim Smith, Montana Pharmacy Association, said that they oppose HB 364 because of patients' safety. Canada and other foreign countries are not as stringent and strict as the controls through our Food and Drug Administration (FDA), and the FDA is not willing to certify the safety of these foreign drugs. He said that the local pharmacists don't like the idea of people importing their drugs from outside the country. The proposed amendments attempt to address that by allowing the pharmacists to order foreign drugs, but they do not feel that the amendments clarify the problem nor are they helpful. What the pharmacists do support is a tax credit for senior citizens for their prescription drug costs and a bill that allocates tobacco tax money for prescription cost relief.

Questions from Committee Members and Responses:

REP. MORGAN said that she has previously voted "no" on this bill because it is illegal. She pointed out that the amendment would now involve the Governor and the Montana School of Pharmacy in this illegal program. **REP. MAEDJE** said that this bill is legal

because seven other states do it and the FDA doesn't care as long as the pharmacists are not involved. The FDA is not enforcing any violations of the Federal law on this issue. The amendment only says that the Governor will direct the School of Pharmacy to inspect the safety of these foreign companies. He said that the FDA already inspects American companies manufacturing drugs in foreign countries.

REP. JAYNE asked if the cigarette tax money referred into the proposed amendment was the "old" cigarette tax. **REP. MAEDJE** said the funding would be a combination of both the new and the old cigarette tax money. **REP. JAYNE** asked if this bill would be taking tobacco tax money away from other programs, since the Health and Human Services Subcommittee has assigned use of the tobacco tax to other uses. **REP. MAEDJE** said that this bill is not competing with other uses of the tobacco tax, and the purpose of this bill follows the intent of the tobacco tax initiative.

REP. RIPLEY asked if this bill is illegal, and if the action of buying foreign prescription drugs is illegal. **REP. MAEDJE** said that technically, the bill is not illegal, however, the person buying foreign prescription drugs is engaging in an illegal activity.

Closing by Sponsor:

REP. MAEDJE said that seven other states already have this type of legislation. Even though it is illegal for someone to order foreign prescription drugs, the law is not enforced because people in government know that these drugs are safe.

{Tape: 4; Side: A; Approx. Time Counter: 14.6 - 32.6; Comments: End of Side A}

HEARING ON HB 374

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS, HD 66, Bozeman, opened the hearing on **HB 374**, a bill to increase the drunk driving penalty when a person under 16 was in vehicle. When the bill was on the House floor, an amendment was added to decrease the 3rd offensive penalty from two years to 12 months. This change had a significant change on the Fiscal Note, because the Department of Corrections (DOC) does not deal with misdemeanors. The estimated \$83,918 cost for increased third offense will probably be cut in half, since these offenders will not be going to the DOC.

Proponents' Testimony:

Bill Muhs, Mothers Against Drunk Driving, said that children riding in vehicles with drunk drivers is a pressing national child endangerment problem. They feel that every child deserves a designated driver. More than 35 states have special sanctions similar to HB 374.

EXHIBIT (aph57a17)

Opponents' Testimony: None

Informational Testimony:

Chris Tweeten, Department of Justice, said that since the amendment removed the felony penalties, the department's concerns have been addressed. This change should result in a decrease in the projected expenses of this legislation.

Questions from Committee Members and Responses:

REP. KAUFMANN asked if there was any evidence that increased penalties will decrease the incidence of drunk driving. **Bill Muhs** said that research on drunk driving finds it difficult to determine what is most effective. However, all of the legislation together is a deterrent to drunk driving; it is difficult to parcel out one component and determine its effectiveness.

REP. JAYNE said if this is a child endangerment bill, then why were 16 and 17 year olds included. **REP. HARRIS** said they are trying to avoid the situation of fellow teens driving their friends. In the case of children under the age of 16, they do not have the choice of being the driver.

Closing by Sponsor:

REP. HARRIS said that 35 other states have this type of legislation. They anticipate that if this bill is passed, there will be 267 arrests for this offense. He said that they would be doing a big service to the children of Montana by passing this bill.

*{Tape: 4; Side: B; Approx. Time Counter: 0 - 11.1; Comments:
Committee recessed until 3:30 p.m.}*

HEARING ON HB 102**Opening Statement by Sponsor:**

REP. RALPH LENHART, HD 38, Glendive, opened the hearing on **HB 102**, a bill to statutorily appropriate money for the Montana Highway Patrol (MHP) officers' retirement. Section 1 of the bill says that the State will annually contribute from the General Fund to the pension trust fund a lump-sum amount determined to pay benefits. If the bill passes, Section 11 says that the money currently in the State special revenue account for the MHP retirement fund will be transferred to the General Fund. Assumption 4 of the Fiscal Note says that approximately \$1 million is collected annually from driver's licenses, and are deposited into a State special revenue fund. About \$800,000 of that money is transferred annually to the MHP retirement pension fund. HB 102 would change this process to have the revenues and expenses recorded in the General Fund instead of the State special revenue fund. He presented a technical amendment that changes the title of the bill.

Proponents' Testimony:

Larry Fasbender, DOJ, said that HB 102 is a win-win situation for everyone. The current process of collecting and expending these funds is complicated; it will be easier if the revenue is deposited into the General Fund and then an appropriation is made. Typically, the revenue exceeds the expenditure each year by about \$110,000.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LENHART asked the Committee to include a copy of the technical amendment with the bill.

{Tape: 4; Side: B; Approx. Time Counter: 11.1 - 32.6; Comments: End of Tape 4}

EXECUTIVE ACTION ON HB 338

Motion/Vote: **REP. FRANKLIN** moved that HB 338 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 239

Motion/Vote: REP. FRANKLIN moved that HB 239 BE TABLED. Motion carried 19-1 by voice vote with REP. JACKSON voting no.

EXECUTIVE ACTION ON HB 745

Motion: REP. FRANKLIN moved that HB 745 DO PASS.

Motion: REP. FRANKLIN moved that amendment HB074501.ajw BE ADOPTED.

Discussion:

Amy Sassano, Governor's Budget Office, said that it is a technical amendment that clarifies the language applicable to the Office of Public Instruction and the Guarantee Fund. The base aid to schools is covered by the Guarantee Fund. If revenues come in too low or expenditures come in too high, relative to the Guarantee Fund, then the General Fund would be used to cover the difference up to \$3 million.

Vote: Motion carried 19-1 by voice vote with REP. HAWK voting no.

Motion: REP. SINRUD moved that amendment HB74501.agd BE ADOPTED.

Discussion:

REP. SINRUD said that this amendment would remove the exempt staff payout for the DOJ. He said that since the administration did not change in the Attorney General's office, he thought it would be bad policy to provide an exempt staff payout.

CHAIRMAN BUZZAS said that she was opposed to the amendment because this is not the time nor the place to deal with exempt staff payouts. **Jon Moe** said that the payout is for termination pay to exempt staff who are leaving employment. He said that it is common to see this type of payout every four years.

REP. RIPLEY said that he favors the amendment because the payout should be included in the DOJ's budget, rather than requesting a supplemental.

Doug Booker, DOJ, said that the exempt staff payout has been in the supplement bill before. This particular position retired,

and from a small division, they could not afford the payout at this late of a date.

Vote: Motion failed 10-10 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting aye. REPS. WITT and TAYLOR voted by proxy.

Motion: REP. SINRUD moved that amendment HB074502.agd BE ADOPTED.

Discussion:

REP. SINRUD said this amendment removes the \$8.5 million Montana Highway Patrol (MHP) settlement from HB 745. He said that he thought the settlement should be in the DOJ's budget as a one-time-only expenditure.

Doug Booker, DOJ, said that lawsuits have always been funded in the supplemental bill. They think it should be in this biennium because the court order has been signed and it will be ready to process very soon.

REP. SINRUD said that the legislature has not seen the court order, nor the agreement between DOJ and the MHP, therefore, he was not willing to make the payment at this time. He said that he thought the purpose of putting the settlement in the supplemental bill was to avoid the budget cap.

Vote: Motion failed 10-10 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting aye. REP. TAYLOR voted by proxy.

Motion: REP. SINRUD moved that amendment HB074503.agd BE ADOPTED.

Discussion:

REP. SINRUD said that they just learned today that there needs to be a \$95,000 increase to pay back the Federal government for the mental health ombudsman, which they refused to pay for.

REP. JAYNE asked what happens if this is not approved, and why it was just learned about today. Amy Sassano said there are no funds in the Governor's Office to pay for this position. She said that through Governor Martz's office they had learned that in FY05 the Federal government would not allow the ombudsman

position be funded through Medicaid, and that is why they have the \$40,000 in the budget. Today they received an e-mail saying that the feds wanted their money back for FY04 also.

REP. JUNEAU said that it is important to have this position.

REP. SINRUD said that this is a good example of proper use of the supplemental.

Vote: Motion carried 16-4 by roll call vote with **REP. FRANKLIN**, **REP. JAYNE**, **REP. MUSGROVE**, and **REP. SESSO** voting no. **REP. TAYLOR** voted by proxy.

Motion: **REP. RIPLEY** moved that amendment HB074510.abs BE ADOPTED.

Discussion:

REP. RIPLEY said this amendment would change the funding from \$2 million to \$1 million for this spring's fire fighting efforts. In HB 2 \$1.6 million is included for fire fighting, and that is the appropriate place to fund it.

CHAIRMAN BUZZAS said that the \$1.6 million in HB would not begin until July 1, 2005, and therefore, would not cover expenses for this spring. **REP. RIPLEY** answered that even if there were fires this spring, the expenses would not need to be paid until after July 1st.

REP. SESSO said that the DNRC handout showed that the expenses associated with the 2003-04 fires were unfunded by \$2 million.

REP. RIPLEY said that he heard them say that \$1 million of this \$2 million supplement was for anticipated fire fighting expenses this spring. **REP. SESSO** said that the handouts stated precisely that the expenses were \$1.273 million and \$963,000 and were for expenses already incurred.

{Tape: 5; Side: A; Approx. Time Counter: 0 - 32.6; Comments: End of Side A}

REP. KAUFMANN said that she thought it was a good idea to plan for this spring's fire fighting expenses. She said that she thought the expenses on the handout were estimates, as shown on the fourth line of the 2005 sheet.

REP. RIPLEY said that HB 2 appropriates for fire fighting expenses, and would be available to cover any expenses related to this spring's fires. He said that is the appropriate funding mechanism and not in a supplemental.

Vote: Motion failed 10-10 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting aye. REPS. HINER and TAYLOR voted by proxy.

Motion: REP. SINRUD moved that amendment HB074504.agd BE ADOPTED.

Discussion:

REP. SINRUD said that this amendment would remove the \$9 million supplemental for payment of the Crow Tribe settlement. He said that he thought the State should stay on their schedule to pay \$1 million per year, particularly since no contracts have yet to be signed.

REP. MUSGROVE said it makes sense to include this settlement in the supplemental. The past payments have been in the DNRC's budget, even though it is a pass-through, causing the department to have to make budget cuts. Since the State currently has a surplus, he said he thought it was important to deal with the settlement now. When the State had budget constraints, the payments were stopped. That action made some of the Tribe's legal staff feel that the State was shirking their responsibilities as stated in the settlement contract.

REP. JAYNE said that the settlement was reached in 2000; a \$3 million payment was made in 2001, no payment in 2002, \$1 million in 2003, no payment in 2004, and \$2 million in 2005. She said that the State has not had a good payment history, because it was supposed to be an annual payment.

REP. RIPLEY said that he thought the State should stay on their existing annual payment schedule, particularly since there is no signed agreement with the Tribe. The \$9 million payment is being used as a way to get around the budget cap.

REP. WELLS said that he agrees with REP. RIPLEY. By making the large payment now, the State would be overlooking the potential for accrued interest, which could be substantial.

CHAIRMAN BUZZAS pointed out that the amendment removes the entire \$9 million. **REP. SINRUD** said that is true, but he has drafted amendments to put the \$1 million annual payment back into HB 2. His concern is that the \$9 million in the supplemental bill is being used to circumvent the budget cap.

Vote: Motion failed 10-10 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting aye. REPS. HINER and TAYLOR voted by proxy.

Motion: REP. SINRUD moved amendment HB74505.agd BE ADOPTED.

Discussion:

REP. SINRUD said that this amendment would put the IRIS computer loan payment back into FY06 and FY07 budgets, because the only reason this is being put into the supplemental is to increase the base budget so more money can be spent in the next biennium.

REP. SESSO said that the testimony before the General Government subcommittee addressed the fiscal soundness of paying off this loan now as opposed to stringing it out over several years. He said there is no motive to use this money now in order to increase the spending cap. It is being made as a sound fiduciary move.

REP. FRANKLIN said that Budget Director Ewer has said that paying on a loan for a non-ongoing expense was foolish. He said that it is better to pay off the loan and avoid additional interest on something that is no longer of benefit to the State.

REP. SINRUD said that there is no benefit to paying off this loan now.

Vote: Motion failed 10-10 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting aye. REPS. HINER and TAYLOR voted by proxy.

Motion: REP. SINRUD moved that amendment HB74506.agd BE ADOPTED.

Discussion:

REP. SINRUD said that the Judiciary has already requested a supplemental for the district courts, and they have a variable fund, so therefore, the amendment is to eliminate the requested \$500,000 for potential excess district court expenditures.

REP. SESSO said that this \$500,000 adjustment was to correct a typographical error. Amy Sassano said that these funds would just be used if the \$6.8 million supplemental approved for the Judiciary is not sufficient to cover their costs for FY05.

Vote: Motion failed 10-10 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting aye. REPS. HINER and TAYLOR voted by proxy.

Motion/Vote: REP. FRANKLIN moved that HB 745 DO PASS AS AMENDED.

Discussion:

REP. MORGAN said that she had missed this morning's hearing of HB 745 but was shocked to see the amount of money requested. She said that she thinks most of the items in this bill are there in order to increase the base budget, which allows the State to spend more money in the next biennium.

REP. SINRUD said that HB 745 causes the legislature to neglect their fiduciary responsibility towards the State, by allowing another \$60 million to be spent in the next biennium. He said that the average supplementals over the past 10 sessions have been \$11 million.

REP. RIPLEY asked what the normal supplementals have been in the past. **Jon Moe** said that past supplementals, for the years 1987-2005, have been as low as \$11.5 million to the high of \$82.2 million (1993). In 2002 it was \$68.2 million, which was related to the 2001 fire season. In the last two bienniums, it has been \$12.5 million and \$12.7 million.

REP. RIPLEY said that he thought they were doing a lot of "smoke and mirrors" with the budget, when the average supplementals over the past two bienniums have been \$12 million.

REP. FRANKLIN said that previous supplementals ranged from \$11 million to \$82 million. The supplemental process has to fluctuate according to what the State's priorities and obligations are.

REP. SESSO said that of the \$56 million supplementals, there is only a net effect to the budget cap of \$5 million (8.53%). Therefore, it is not correct to say that the passing of HB 745 is directly related to spending an additional \$56 million in the next biennium. He said that these one-time payments/settlements that are in HB 745 will need to be made at some time, so it is incorrect to say that they are doing the public a disservice to include them in this bill.

REP. WELLS said that he disagrees with REP. SESSO because spending it in the current base will increase the base in the next biennium by \$56 million. Then the additional 8.53% increase

is added on to that. He said that there is a difference in philosophy. He said that he represents the people that are paying the bills in Montana, not the people that are spending the money. Almost every person that testified on behalf of these issues are the people that are spending this money. He said that they need to remember who is paying those bills. It is irresponsible to pay off these bills in the supplementals, because it is going to put the State's future budgets in jeopardy. He said that the purpose of a supplemental is to pay off a few outstanding bills, not pay off expenses that are due over the next four to five years.

REP. KAUFMAN said that in regard to the comment that the people testifying are "spenders," she reminded the Committee that these are the people that are providing services, putting out forest fires, taking care of foster children, and caring for people in prisons based upon the directive of the legislature. Therefore, she said she objects to the characterization of the people who work for the State as big spenders. They are being asked to do these jobs for the benefit of the people in Montana that the legislature cares for.

{Tape: 5; Side: B; Approx. Time Counter: 0 - 32.6; Comments: End of Tape 5}

Vote: Motion failed 10-10 by roll call vote with **REP. BUZZAS**, **REP. CALLAHAN**, **REP. FRANKLIN**, **REP. HINER**, **REP. JAYNE**, **REP. JUNEAU**, **REP. KAUFMANN**, **REP. LENHART**, **REP. MUSGROVE**, and **REP. SESSO** voting aye. **REP. TAYLOR** voted by proxy.

Under Adopted House Rule H30-50, Procedures, Subsection 5, HB 745 was placed on the Committee of the Whole Agenda for second reading on March 23, 2005.

EXECUTIVE ACTION ON HB 22

Motion: **REP. MCNUTT** moved that HB 22 DO PASS.

Discussion:

REP. MCNUTT said that there is a new Fiscal Note to account for the DOR's change in expenses relative to collecting the revenue, and has been decreased from \$160,000 to \$5,000. He said that this bill has bipartisan support.

REP. MORGAN said that other states have already done this water adjudication process, and it is critical that Montana passes HB 22 so that we don't lose our water rights.

REP. MUSGROVE said that water is the most important issue this session. It is important that Montana do something about it in a timely fashion.

Vote: Motion carried unanimously by roll call vote. REPS. JUNEAU, WITT, FRANKLIN, LENHART, SINRUD, TAYLOR, and WELLS voted by proxy.

EXECUTIVE ACTION ON HB 340

Motion: REP. CALLAHAN moved that HB 340 DO PASS.

Substitute Motion/Vote: REP. MORGAN made a substitute motion that HB 340 BE TABLED. Substitute motion carried 17-3 by roll call vote with REP. CALLAHAN, REP. MUSGROVE, and REP. SESSO voting no. REPS. JUNEAU, WITT, FRANKLIN, LENHART, TAYLOR, and WELLS voted by proxy.

EXECUTIVE ACTION ON HB 364

Motion/Vote: REP. SINRUD moved that HB 364 BE TABLED. Motion failed 9-11 by roll call vote with REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WITT and REP. WELLS voting aye. REPS. JUNEAU, WITT, FRANKLIN, LENHART, and TAYLOR voted by proxy.

Motion: REP. CALLAHAN moved that HB 364 DO PASS.

Motion: REP. MORGAN moved that CONCEPTUAL AMENDMENT BE ADOPTED.

Discussion:

REP. MORGAN said that this amendment addresses "contingent voidness," as was handed out to the Committee by Donald Iverson during his opposing testimony. She said that HB 364 is not illegal, therefore, the amendment will require DPHHS to seek a determine from the Federal government whether the legislation is legal.

Vote: Motion carried 11-9 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. HINER, REP. KAUFMANN, REP. LENHART, REP. MUSGROVE, and REP. SESSO voting no. REPS. JUNEAU, WITT, FRANKLIN, LENHART, TAYLOR, and WELLS voted by proxy.

Motion/Vote: REP. CALLAHAN moved that HB 364 DO PASS AS AMENDED. Motion carried 11-9 by roll call vote with REP. GLASER, REP. HAWK, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting no. REPS. JUNEAU, WITT, FRANKLIN, LENHART, and TAYLOR voted by proxy.

EXECUTIVE ACTION ON HB 368

Motion/Vote: REP. HAWK moved that HB 368 DO PASS. Motion carried 11-9 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. HINER, REP. JUNEAU, REP. KAUFMANN, REP. LENHART, REP. MUSGROVE, and REP. SESSO voting no. REPS. JUNEAU, WITT, FRANKLIN, LENHART, SINRUD, TAYLOR, and WELLS voted by proxy.

EXECUTIVE ACTION ON HB 640

Motion: REP. SESSO moved that HB 640 DO PASS.

Motion: REP. HINER moved that amendment HB064001.ajw BE ADOPTED.

Discussion:

Jon Moe explained that the amendment addresses raised by the Committee. REP. SESSO said that these proposed changes were made by the Department of Administration (DOA) Information Services Division to clarify their position on the bill. Jon Moe said that numbers one, four and five came from the DOA and numbers two and three came out of a concern raised by REP. SESSO.

Vote: Motion carried unanimously by voice vote.

Motion: REP. SESSO moved that HB 640 DO PASS AS AMENDED.

Discussion:

REP. SESSO said that, along with the sponsor, he does not agree with the two Fiscal Notes. He asked if they could pass the bill with the sponsor's revised Fiscal Note or pass the bill with no appropriation. Jon Moe said the bill can be passed without an appropriation, and it is likely that the department will pursue getting an appropriation into HB 2. He said that the sponsor's Fiscal Note appears to use proprietary money, which may not require an appropriation. The other choice is to prepare an amendment that puts the appropriation into the bill at whatever amount the Committee decides. REP. SESSO said that it would be his wish to pass the bill with a limited appropriation.

REP. JACKSON said that the bill does not solve the POINTS computer problem. He said it is a bad idea because they are looking for the best quality at the cheapest price.

CHAIRMAN BUZZAS clarified that this bill does not require the State to use in-state companies, it just gives them a preference if they are available and qualified to do the work. She said it is an economic development bill for Montana. She said that she feels comfortable with the sponsor's Fiscal Note.

{Tape: 6; Side: A; Approx. Time Counter: 0 - 32.6; Comments: End of Side A, Tape 6}

REP. GLASER said that if HB 640 had been in place previously, the company currently working on the IRIS computer system would not have been the successful bidder. They are doing a good job because they have placed five of their employees in Montana to work on this project. He said the State uses local people when they can, because those companies have a competitive advantage. If HB 640 passes, other states will discriminate against Montana.

REP. HAWK suggested that they let the Fiscal Note amendment occur on the House floor during second reading.

Vote: Motion failed 4-16 by roll call vote with **REP. BUZZAS**, **REP. KAUFMANN**, **REP. MUSGROVE**, and **REP. SESSO** voting aye. **REPS. JUNEAU**, **WITT**, **FRANKLIN**, **MORGAN**, **SINRUD**, **TAYLOR**, and **WELLS** voted by proxy.

EXECUTIVE ACTION ON HB 470

Motion/Vote: **REP. RIPLEY** moved that HB 470 DO PASS. Motion carried unanimously by voice vote.

NOTE: Committee agreed previously that all unamended bills that pass unanimously will automatically be placed on the Consent Calendar.

EXECUTIVE ACTION ON HB 169

Motion/Vote: **REP. HINER** moved that HB 169 DO PASS. Motion carried 13-7 by roll call vote with **REP. HAWK**, **REP. JAYNE**, **REP. MCNUTT**, **REP. MORGAN**, **REP. RIPLEY**, **REP. WELLS**, and **REP. WITT** voting no. **REPS. JUNEAU**, **WITT**, **FRANKLIN**, **LENHART**, **MORGAN**, **SINRUD**, and **TAYLOR** voted by proxy.

EXECUTIVE ACTION ON HB 392

Motion: REP. CALLAHAN moved that HB 392 DO PASS.

Discussion:

REP. SESSO said that he thought the Appellate Defender's Fiscal Note appears to be too high. He asked if their only choice was to pass the bill with this Fiscal Note. CHAIRMAN BUZZAS said that since the appropriation is not in the body of the bill, it does not necessarily mean that the money mentioned in the Fiscal Note will stay with the bill. REP. KAUFMANN said that if the bill passes, the amounts in the Fiscal Note will appear on the status sheet for HB 2. Jon Moe said that is correct; it will be on the status sheet in the column titled "Potential," but will not be subtracted from the fund balance.

Substitute Motion/Vote: REP. RIPLEY made a substitute motion that HB 392 BE TABLED. Substitute motion carried 17-3 by roll call vote with REP. BUZZAS, REP. HINER, and REP. JACKSON voting no. REPS. JUNEAU, WITT, FRANKLIN, LENHART, MORGAN, SINRUD, TAYLOR, and WELLS voted by proxy.

EXECUTIVE ACTION ON HB 673

Motion: REP. JACKSON moved that HB 673 DO PASS.

Substitute Motion/Vote: REP. HINER made a substitute motion that HB 673 BE TABLED. Substitute motion failed 10-10 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. HINER, REP. JAYNE, REP. JUNEAU, REP. KAUFMANN, REP. LENHART, REP. MUSGROVE, and REP. SESSO voting aye. REPS. JUNEAU, WITT, FRANKLIN, LENHART, MORGAN, SINRUD, TAYLOR, and WELLS voted by proxy.

Vote: Motion carried 11-9 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. HINER, REP. JAYNE, REP. JUNEAU, REP. LENHART, REP. MUSGROVE, and REP. SESSO voting no. REPS. JUNEAU, WITT, FRANKLIN, LENHART, MORGAN, SINRUD, TAYLOR, and WELLS voted by proxy.

EXECUTIVE ACTION ON HB 369

Motion: REP. HINER moved that HB 369 DO PASS.

Substitute Motion/Vote: REP. HAWK made a substitute motion that HB 369 BE TABLED. Substitute motion carried 17-3 by voice vote with REP. BUZZAS, REP. HINER, and REP. KAUFMANN voting no. REPS. FRANKLIN, LENHART, JUNEAU, TAYLOR, WELLS, and WITT voted by proxy.

EXECUTIVE ACTION ON HB 99

Motion: REP. JACKSON moved that HB 99 DO PASS.

Substitute Motion/Vote: REP. KAUFMANN made a substitute motion that HB 99 BE TABLED. Substitute motion carried 11-9 by roll call vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MCNUTT, REP. MORGAN, REP. RIPLEY, REP. TAYLOR, REP. WELLS, and REP. WITT voting no. REPS. JUNEAU, WITT, FRANKLIN, JAYNE, LENHART, MORGAN, SINRUD, TAYLOR, and WELLS voted by proxy.

EXECUTIVE ACTION ON HB 536

Motion/Vote: REP. CALLAHAN moved that HB 536 DO PASS. Motion carried 12-8 by voice vote with REP. GLASER, REP. HAWK, REP. JACKSON, REP. MORGAN, REP. SINRUD, REP. TAYLOR, REP. WELLS, and REP. WITT voting no. REPS. SINRUD, WELLS, TAYLOR, WITT, JUNEAU, FRANKLIN, LENHART, and JAYNE voted by proxy.

EXECUTIVE ACTION ON HB 728

Motion: REP. HAWK moved that HB 728 DO PASS.

Motion/Vote: REP. JACKSON moved that AMENDMENT HB072801.ash BE ADOPTED. Motion carried unanimously by voice vote. REPS. WELLS, TAYLOR, WITT, JUNEAU, FRANKLIN, LENHART, JAYNE, and SINRUD voted by proxy.

Motion/Vote: REP. HAWK moved that HB 728 DO PASS AS AMENDED. Motion carried 15-5 by voice vote with REP. CALLAHAN, REP. FRANKLIN, REP. JAYNE, REP. JUNEAU, and REP. SESSO voting no. REPS. WELLS, TAYLOR, WITT, JUNEAU, FRANKLIN, LENHART, JAYNE, and SINRUD voted by proxy.

EXECUTIVE ACTION ON HB 577

Motion/Vote: REP. HINER moved that HB 577 DO PASS. Motion carried unanimously by voice vote. REPS. WELLS, TAYLOR, WITT, JUNEAU, FRANKLIN, LENHART, JAYNE, and SINRUD voted by proxy.

NOTE: Committee agreed previously that all unamended bills that pass unanimously will automatically be placed on the Consent Calendar.

EXECUTIVE ACTION ON HB 435

Motion/Vote: REP. SESSO moved that HB 435 DO PASS. Motion failed 10-10 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. HINER, REP. JAYNE, REP. JUNEAU, REP. KAUFMANN, REP. LENHART, REP. MUSGROVE, and REP. SESSO voting aye. REPS. JUNEAU, WITT, FRANKLIN, JAYNE, MORGAN, SINRUD, TAYLOR, and WELLS voted by proxy.

(NOTE: Due to a misunderstanding regarding the time of hearing for HB 364, Dennis Iverson of the Pharmaceutical Research and Manufacturers of America, Peter Wolfgram a Butte pharmacist, Chris LaPoy of Johnson & Johnson, and Claudia Clifford of AARP, were allowed to give their testimony after this hearing was closed.)

Opponents' Testimony

Dennis Iverson, Pharmaceutical Research and Manufacturers of America, said that the bill needs an amendment to address the liability that might occur since the laws is contrary to Federal law. There concern is that the State would incur liability and the also the pharmacists. The proposed amendment would make the bill contingent upon a determination of whether or not it meets the requirements of Federal law.

[EXHIBIT](#)(aph57a18)

Peter Wolfgram, Butte pharmacist, said that he owns four pharmacies in Montana, and urged the Committee to oppose HB 364. He said that he is for making prescription drugs affordable, but he cannot support a plan that sends business out of the state and out of the country, which is what this bill would do. He said that 118 pharmacies in Montana are independently owned and employ 800 people; they support their local communities and rely on the communities to support them. He said that in addition to his own annual payroll of \$800,000, he provides \$45,000 in benefits to

his employees. HB 364 is not the solution for providing affordable healthcare. It will result in local pharmacies closing and their employees being without work. The solution is to keep the local pharmacies in business providing quality products to Montana people.

Chris LaPoy, Johnson & Johnson, said that HB 364 is in violation of Federal law. He said that contrary to popular belief, the FDA is indeed enforcing that Federal law. He shared a recent news article that said 54 Illinois residents who had purchased re-imported medications from a State-facilitated program had their medications seized by the FDA. He said that they agree something needs to be done to make prescription drugs more affordable for people who are uninsured. Thirty-seven thousand Montanans have received free medications from manufacturers-supported patient assistance programs. A new program was recently launched by 10 of the largest manufacturers whereby any Montanan who is at 300% or less of the Federal poverty limit (\$30,000 for an individual) and uninsured can qualify for a 25-45% discount on their medications. He said that both of these programs are an alternative to HB 364; other states have established programs that help facilitate enrollment in these industry programs.

[EXHIBIT \(aph57a19\)](#)

Proponents' Testimony:

Claudia Clifford, AARP, said that 85% of their members view access to affordable drugs as a high legislative priority. Many of the phone calls they receive from their members are in regard to finding a reliable and safe source for getting drugs from Canada.

Ms. Clifford said that their support for this bill is guarded because: 1) The FDA does not approve re-importation of pharmaceuticals; AARP is supporting Federal legislation to have this changed; 2) Re-importation is not the solution to affordable prescription drugs and curbing their rapidly escalating prices; 3) SB 324 is a better solution for addressing the high cost of prescription drugs.

[EXHIBIT \(aph57a20\)](#)

[EXHIBIT \(aph57a21\)](#)

[EXHIBIT \(aph57a22\)](#)

Adjournment: 6:35 P.M.

REP. ROSALIE (ROSIE) BUZZAS, Chairman

MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

EXHIBIT ([aph57aad0.PDF](#))